

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 04-7053**

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VENTURA GARCIA,

Plaintiff - Appellant,

versus

JOHNNIE SHUFFORD, ex-officer at McDowell  
County Jail,

Defendant - Appellee.

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**No. 04-7805**

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VENTURA GARCIA,

Plaintiff - Appellant,

versus

JOHNNIE SHUFFORD, ex-officer at McDowell  
County Jail,

Defendant - Appellee.

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Appeals from the United States District Court for the Western  
District of North Carolina, at Asheville. Graham C. Mullen, Chief  
District Judge. (CA-02-275)

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Submitted: December 15, 2004

Decided: January 19, 2005

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Before WILKINSON, LUTTIG, and TRAXLER, Circuit Judges.

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No. 04-7053, dismissed; No. 04-7805, affirmed by unpublished per curiam opinion.

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Ventura Garcia, Appellant Pro Se. Mason Gardner Alexander, Jr., Amy Shannon Sumerell, FISHER & PHILLIPS, LLP, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Ventura Garcia seeks to appeal the district court's order entering judgment in his favor in his action filed pursuant to 42 U.S.C. § 1983 (2000). (Appeal No. 04-7053). Because Garcia's notice of appeal was received in the district court after the expiration of the appeal period, we remanded the case to the district court for a determination of the timeliness of the filing under Fed. R. App. P. 4(c)(1)\* and Houston v. Lack, 487 U.S. 266 (1988) (notice considered filed as of the date Appellant delivers it to prison officials for forwarding to the court).

On remand, the district court issued an order finding that Garcia's notice of appeal was not timely filed. In appeal No. 04-7805, Garcia seeks to appeal from this order. An appellate court cannot disregard a district court's factual findings absent clear error. We find no clear error in the district court's determination that Garcia's notice of appeal was not filed within the appeal period, and therefore affirm this ruling. See United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948) (providing standard).

We dismiss appeal No. 04-7053 for lack of jurisdiction because the notice of appeal was not timely filed. Parties are accorded thirty days after the entry of the district court's final

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\*Rule 4(c)(1) states that a prisoner's notice of appeal is timely if it is deposited in the institution's internal mail system on or before the last day for filing.

judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on April 27, 2004. The notice of appeal was filed on June 12, 2004. Because Garcia failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we dismiss this appeal as untimely. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 04-7053, DISMISSED;  
No. 04-7805, AFFIRMED